

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED
FEB 05 2004

<p>ALBERTO-CULVER COMPANY, a Delaware corporation, Plaintiff, -against- SUNSTAR, INC., a Japanese corporation, SUNSTAR GROUP COMPANY, (f/k/a Alberto-Sunstar Co., Ltd) a Japanese corporation, KANEDA, KASAN, KABUSHIKI KAISHA, a Japanese corporation, and BANK ONE, NATIONAL ASSOCIATION, as Trustee under Trust Agreement No. 22-81196, dated February 27, 1980, a national banking association, Defendants.</p>	<p style="text-align: right;">RONALD A. GUZMAN, JUDGE UNITED STATES DISTRICT COURT</p> <p>Civil Action No. 01 C 5825 ✓</p> <p>Hon. Ronald A. Guzman</p> <p style="font-size: 2em; font-weight: bold;">01 C 0736</p> <p style="text-align: right;">DOCKETED FEB 09 2004</p>
<p>-and-</p>	
<p>SUNSTAR, INC., Plaintiff, -against- ALBERTO-CULVER COMPANY, INC. and BANK ONE CORPORATION f/k/a FIRST NATIONAL BANK OF CHICAGO, Defendants.</p>	<p>Civil Action No. 01 C 0736</p> <p>Hon. Ronald A. Guzman</p>

**BANK ONE'S FIRST MOTION IN LIMINE
RE: THE TRUSTEE'S SUSPENSION**

Bank One, National Association, as Trustee, hereby moves this Court for an order barring evidence, including testimony and exhibits, and argument on the issue of the correctness, reasonableness, alleged motivation and any other consideration of the propriety of Bank One's suspension of Sunstar's license to use Licensed Trademarks. In connection with this motion, Bank One states:

1. Sunstar sued Bank One, Trustee, alleging, *inter alia*, that Bank One breached the Agreement at issue in this case, as well as fiduciary duties to Sunstar, by

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various alleged acts and omissions relating to Bank One's June 28, 1999 suspension of Sunstar's license.

2. In its November 6, 2002 Memorandum And Order ("11/6/02 Order"), the Court granted Bank One's Motion For Summary Judgment on Sunstar's breach of contract (Count I), breach of fiduciary duty (Count III) and removal of trustee (Count XIII) claims, and dismissed Sunstar's said claims against Bank One. The Court stated, *inter alia*: "the Court finds that no reasonable jury could find for Sunstar that Bank One has engaged in breach of trust, misconduct and disregard of fiduciary duties against Sunstar. [T]he Court has dismissed the claims of breach of fiduciary duty, breach of contract, and waste of trust assets that Sunstar has alleged against Bank One..." 11/6/02 Order, p. 18.

3. Following the Court's 11/6/02 Order, Sunstar has only one remaining claim left in the case, Count VII for declaratory judgment that Sunstar's use of a certain trademark adopted in 1999 did not violate Section IV of the License Agreement. Sunstar has no claim remaining challenging the Trustee's suspension of its license.


4. Sunstar has indicated in the Pretrial Order Submission that it will attempt to present to the jury its dismissed claims challenging propriety of the suspension.

5. Any testimony or argument to the jury concerning evidence relating to the Sunstar dismissed claims would be prejudicial to Bank One and should be barred.

The grounds for this motion will be more fully set forth in Bank One's Memorandum In Support Of Its First Motion In Limine, to be submitted in accordance with the Court's scheduling order for submission of briefing on motions in limine.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Bostjancich, an attorney, hereby certify that, on this 5th day of February 2004, copies of the foregoing Bank One's First Motion In Limine Re: The Trustee's Suspension were served on the following counsel of record by personal service:

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